October 3, 2016

General Council
Complaints Examination &
Legal Administration
Attn: Donna Rawls, Paralegal
999 E Street, NW
Washington, DC 20436

MUR 7115

Dear Ms. Rawls,

The following is my response as treasurer of the AJ Kern for Congress campaign. I am responding to Federal Election Commission compliant MUR 7115, filed by Mr. David Fitzsimmons, Congressional Chief of Staff to Congressman Tom Emmer, who AJ Kern challenged in the August 9, 2016, Minnesota 6th Congressional District primary election.

The complaint is a 6 count indictment including notification that I filed two reports late, that I personally exceeded contribution and loan limits to my Wife, AJ's campaign, that the AJ Kern Campaign contributed to itself and that one of our supporters used a small business check from his shoe store which he owns rather than his personal checking account.

All complaints have either been addressed by filing amended returns. There were no illegal contributions or unethical fundraising activities, rather the items of concern to Chief of Staff David Fitzsimmons represent simple mistakes in classification of transactions by this volunteer treasurer.

As campaign manager, treasurer, chief information officer, all other campaign positions and husband, I am asking that the Federal Election Commission take no action against me and to close this complaint.

Count 1.

Mr. Fitzsimmons alleges that I filed my first quarterly report late.

I did indeed file my report one day late on April 19th, one day after the April 18th filing deadline, as April 15th was emancipation day and IRS filings were due the next business day, or the 18th. I anticipate that the FEC will handle this situation through standard procedures outlined in Section 4 of the FEC Committee Rules entitled "Administrative Fines for Late Filers and Non-filers". I am not a non-filer.

I apologize sincerely for being late with this report, but as the sole committee member other than Candidate AJ Kern, I spent my time preparing for the endorsing convention—the reason for the campaign. In fact AJ Kern came within 11 delegates of forestalling sitting congressman Emmer's Republican Party endorsement, despite spending over \$1 million as compared to our less than \$20,000 in campaign expenditures.

Given the relatively automatic nature of the Administrative Fines provisions of the FEC rules I am disappointed that Congressman Emmer's Chief of Staff saw fit to file this complaint which is clearly redundant to the FEC's standard operating procedures and especially given that my reports were filed just one day late.

I am asking that the Federal Election Commission take no action on this charge.

Count 2.

Congressional Chief of Staff David Fitzsimmons alleges that I contributed too much of our money to my Wife's campaign.

Because all of our assets used to fund the campaign are owned jointly, I thought that labeling transactions as having been from either AJ or myself would be interpreted as self-funding from the candidate. These transactions were revised in an amendment dated September 25th showing them as personal loans from AJ Kern. There were no illegal contributions, as AJ's Financial Disclosure lists over \$250,000 in personal savings held jointly, far greater than is needed to preclude triggering a contribution from me. AJ could easily have self-funded her entire campaign with no contributions from me, or even any external fundraising for that matter. Surely Mr. Fitzsimmons has reviewed AJ's personal financial disclosure and is aware of this situation.

I am asking that the Federal Election Commission take no action on this charge.

Count 3. Chief of Staff Fitzsimmons alleges that I exceeded the \$100.00 cash contribution limit.

He cites transactions from March 8th and 18th and April 11th and 23rd. These transactions were from situations in which we received small contributions of as little as \$3 to as much as \$50 in cash from small groups of supporters. Because I did not personally identify each contributor, I simply recorded the contributions as cash contributions from me as I was not aware that I could enter anonymous contributions into the FecFile software. Per my discussions with FEC staff I have amended my report showing these transactions which total \$576.00 from small anonymous contributions.

I am asking that the Federal Election Commission take no action on this charge.

Count 4. Congressional Chief Staff Fitzsimmons alleges that the AJ Kern for Congress campaign illegally contributed to itself.

I am not certain that such a transaction would actually violate an FEC rule as I am not an expert, but I will simply add that there were three transactions allocated to AJ Kern for Congress, which should have been allocated to AJ Kern (candidate). I checked the wrong drop-down option when recording these transactions in FecFile software. I have now amended these transactions, correctly showing them as contributions from AJ Kern Candidate.

I am asking that the Federal Election Commission take no action on this charge.

Count 5. David Fitzsimmonsm, Congressional Chief of Staf to Congressman Tom Emmer, alleges that Mr. Kevin Durken, owner of the Boot Shack shoe store provided an illegal contribution from a corporation to our campaign.

Mr. Durken is a small business owner in the St. Cloud area selling boots and shoes at his business the Boot Shack. Mr. Durken and his wife Deb own and operate this store and, as is not uncommon, Mr. Durken inadvertently used his business check book rather than personal check book to donate to AJ's campaign.

When I saw that the check had been deposited, I put a memo to myself in the description to refund the check to Mr. Durken and also telephoned him to let him know we would need to straighten things out at our first opportunity. Now that the election is over, we have that transaction in progress. I have refunded their contribution and sent them a check and they have sent me a personal check. This transaction will show up on the next report.

I would like to express to the FEC my outrage that Mr. Emmer's Congressional Chief of Staff has filed this complaint, knowing full well how common such errors occur and are routinely corrected by people who live lives based on common decency, trust and honesty. The fact that potential future supporters now know that if they contribute to AJ's campaign, they may be harassed by Mr. Emmer's Congressional Chief of Staff will undoubtedly have a chilling effect on future fundraising and general campaigning efforts.

To put this into context, I have included two posts from the Boot Shack FaceBook page illustrating the kind of people the Durkens are and how ridiculous it is that Mr. Fitzsimmons felt compelled to tattle on them for an honest mistake.

I am waiting for Mr. Fitzsimmons to get busy making the FEC aware that the Durkens have also been busy trying to subvert the political process by donating to the local Mutton Busting competition and by trying to influence the local branch of Catholic Charities with their contributions.

I am asking that the Federal Election Commission take no action on this charge.

John W. Kern P.O. Box 503 Houghton, MI 49931

The E

The Boot Shack

August 18 at 2:21pm · 🚱

Please note we will be closing early on Friday, August 19th to present trophies for the Mutton Busting Competition at the Clearwater Rodeo. The Boot Shack is a proud sponsor of this great event and has tickets available for purchase at the shack.





The Boot Shack shared Catholic Charities of the Diocese of St. Cloud, IMN's photo.

August 11 al 4:34pm - 🚱



Catholic Charities of the Diocese of St. Cloud, MN August 11 at 4:20pm · 🚱

dr Like Page

The Boot Shack donated ALL of these New Balance shoes for Catholic Charities Emergency Services clients. Our clients usually expect to receive hand-me-downs whe...

Count 6. Mr. Fitzsimmons alleges that my pre-primary report was filed late.

I am dismayed that Mr. Emmer's Congressional Chief of Staff had the time and felt the need to alert the FEC to a situation which is easily handled by the FEC's standard reporting processes outlined in the Administrative Fines section. The report was filed within the 4 day grace period outlined in the FEC notice I received in the mail, again making Mr. Fitzsimmons complaint fully redundant to the administrative process the FEC has in place to encourage timely filing.

I would also point out that the pre-election report, with close proximity to key time in the election cycle, exacts a differential penalty on a small grassroots campaigns such as ours, relative to highly funded incumbent campaigns. At that point in time I was needed helping to campaign, rather than reporting to the FEC about how our nearly nonexistent fundraising was going.

I am respectfully asking that the FEC take no action on this complaint or any of the preceding complaints filed by Congressman Tom Emmer's Congressional Chief of Staff, Mr. David Fitzsimmons.